IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2761 of 1998
with
Special Civil Application No.3875 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJNAGAR TEXTILE MILLS NO.1

Versus

HASMUKH SATYAVANBHAI

Appearance:
NANAVATI & NANAVATI for the Petitioner.
MR PJ MEHTA for Respondent No. 1
MR HL RAVAL for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/11/2003

ORAL JUDGEMENT

Since common point is involved in both these petitions and since both these petitions are filed, challenging the order passed by the Industrial Court,

Ahmedabad in Appeal (IC) No.42 of 1996, both these petitions are disposed of by this common order.

The respondent in Special Civil Application No.2761 of 1998, was appointed as a Badli 'Doffer' in the petitioner-Company. While he was in service, he was subjected to departmental proceedings on the ground of serious misconduct. It is alleged against him that he had used abusive language against a superior officer and in view of the said misconduct, he was subjected to the said departmental enquiry. The charge levelled against the said employee was proved in the domestic enquiry, and, ultimately, he was removed from service, in view of the aforesaid misconduct of using abusive language and abusing the spinning master, i.e. the Head of the Department.

The concerned workman thereafter preferred an application, being T. Application No.606 of 1986, under Section 79(1) of the Bombay Industrial Relations Act ("BIR Act", for short), challenging the said removal order on various grounds.

The Labour Court, after considering the facts and circumstances of the case, came to the conclusion that the domestic enquiry was properly held against the workman. It also further came to the conclusion that the misconduct in question is of a serious nature as the workman had used abusive language against a superior officer. The Labour Court, accordingly, came to the conclusion that in view of the misconduct in question, the Order of removal is just and proper. Ultimately, the Labour Court rejected the said application of the respondent-workman.

The respondent-workman thereafter carried the matter further by way of appeal. The said appeal was filed under Section 84 of the BIR Act and the same was numbered as Appeal (IC) No.42 of 1996.

The Appellate Court came to the conclusion that the enquiry in question is held validly and that the misconduct for which the respondent-workman was charged is appropriately proved in the departmental enquiry. However, after considering various judgments cited before it, the appellate court came to the conclusion that the penalty of removal is on the higher side. The appellate court came to the conclusion that the alleged misconduct regarding using abusive language towards superior officer is not of such a nature, which would justify the maximum penalty of dismissal or removal. The appellate court,

thereafter, interfered with the order of penalty, by passing an order of reinstatement in favour of the respondent-workman to his original post and granted 40% of the back wages for the intervening period.

Being aggrieved by the aforesaid order of the Industrial Court, Ahmedabad, passed in Appeal (IC) No.42 of 1996, the petitioner-Mill has filed Special Civil Application No.2761 of 1998.

So far as the respondent of the said Special Civil Application is concerned, he has also filed a substantive petition, being Special Civil Application No.3875 of 1998, by which he has challenged the order of the appellate court in granting back wages to the extent of 40% only. According to the concerned workman, the appellate court should have granted him full back wages, instead of restricting the same to 40%.

As stated earlier, since both these petitions relate to the challenge to the Award of the Industrial Court, both these petitions are heard together today and are being disposed of by this common order.

Mr.Shukla, learned Advocate appearing for the petitioner-Company, submitted that it is not in dispute that the petitioner-management has already complied with the order of reinstatement and that the concerned workman is already in service by virtue of the order of the Industrial Court. The said fact, as such, is not in dispute. Considering the aforesaid aspect of the matter and even otherwise also, since the Industrial Court has found that the penalty of removal is on the higher side, considering the misconduct in question, in my view, no interference of this Court is called for so far as the order of reinstatement is concerned. However, both the sides have addressed the Court at length in connection with the payment of back wages for the intervening period, which is awarded by the Industrial Court.

Mr.Shukla, for the petitioner, has vehemently argued that this is not a case in which any back wages were required to be given to the concerned workman as the misconduct in question is a serious one and even if the Court was justified in interfering with the punishment order, in view of the proved misconduct, it is not a case in which any back wages are required to be paid.

Mr.Raval, who is appearing for the concerned workman, on the other hand, has submitted that the misconduct in question is not of such a serious nature,

by which the concerned workman can be denied 60% back wages. He submitted that, upto the appellate court, the matter took about 10 years from the date of removal and he submitted that the Industrial Court should have allowed full back wages for the entire period, or, at least 75% of the back wages should have been given, as, considerable time has passed since the date of the order of removal. He, therefore, submitted that this Court, while modifying the order of the Industrial Court, may award 75% of the back wages, as the misconduct is not of such a serious nature, by which the workman should be denied benefit of back wages for such a long period. He also further submitted that so far as the intervening period is concerned, the workman was practically starving and, with difficulty, he has passed his days in a miserable position.

I have heard both the sides at length in this connection.

As pointed out earlier, so far as the order of reinstatement is concerned, considering the reasoning given by the Industrial Court, the same is not required to be interfered with by this Court in its extraordinary jurisdiction under Article 226/227 of the Constitution of India. Even otherwise, as pointed out by both the sides, concerned workman has already been reinstated in service since long in view of the order of the appellate court and that is also an additional ground on which order of reinstatement is not required to be interfered with. Even otherwise, both the sides have mainly contested the matter as regards payment of back wages.

It is no doubt true, as argued by Mr.Shukla, that after appropriate enquiry, misconduct in question is proved against the concerned workman. He, therefore, submitted that it is a different thing if the Court interferes with the penalty order by substituting the penalty in an appropriate manner. He, however, submitted that the concerned workman should not be allowed to get premium by ordering back wages for the intervening period, as misconduct is proved. He submitted that considering the misconduct in question, this is not a case in which the appellate court should have granted any back wages.

Mr.Raval, on the other hand, has submitted that, even though in the enquiry as well as in the courts below, it has been found that the misconduct of using abusive language is proved against the workman, yet, the said misconduct cannot be said to be of such a serious

nature, wherein the concerned employee should be deprived of back wages to the extent of 60%, as has been done by the appellate court, which pertains to a period of about 10 years. He submitted that the punishment imposed in the departmental enquiry should not be disproportionate to the charges proved. He submitted that looking to the trivial nature of the charge, it is not a case wherein the concerned workman should be deprived back wages to the extent of 60%, which has been done by the Industrial Court.

After going through the order of the appellate court and after hearing Advocates of both the sides, I am of the opinion that considering the fact that the misconduct in question is already proved against the concerned workman and in order to see that there may be some deterrent effect on the concerned workman so that he may not repeat the said act again in future, it is necessary that while deciding the question of back wages, the Court should consider this aspect of the matter so that there may be some deterrent effect on the concerned employee. Ultimately, the learned Advocates of both the sides have left the question about payment of back wages to this Court.

Mr.Shukla has fairly submitted that, ultimately, the Court may consider the question of reducing the payment of back wages appropriately considering the facts and circumstances of the case. Since, ultimately, the question is left to the Court, in my view, considering the nature of the misconduct proved against the concerned workman, as well as considering the fact that, for a considerable period, the respondent workman was also out of job, as, practically, for about more than 10 years, the concerned workman was required to be out of job and that, ultimately, he was taken back in service only after the order of the appellate court and considering the fact that the past record of the concerned workman is clean and blotless, as well as considering the fact that there may be some deterrent effect on the concerned workman so that he may not repeat this type of misconduct, as well as to see that the Management is able to maintain discipline in the establishment so that the atmosphere of the Industry is not spoiled, it would be just and proper to grant a lump sum amount of Rs.30,000/-, in all, for the entire intervening period towards back wages. While considering this aspect of the matter, this Court has also taken into consideration the submission of Mr.Shukla that the petitioner-Mill is a sick unit and that, now, the Mill is taken over by the National Textile Corporation and even the financial condition of the Mill

is in a weak position, and, accordingly, considering the matter from all the aforesaid angles, in my view, the order of the Industrial Court in Appeal (IC) No.42 of 1996 is required to be modified and it is accordingly modified and, instead of 40% back wages granted by the appellate court, the same is substituted by payment of Rs.30,000/-, in all, for the intervening period. In short, the order of the appellate court is accordingly modified and, instead of 40% back wages, the concerned workman will be entitled to Rs.30,000/-,in all, as per the order of the appellate court.

The petitioner-Mill may pay the aforesaid amount to the respondent-workman within a period of four weeks from today. It is clarified that rest of the order of the appellate court is confirmed regarding continuity of service, etc., and the effect of this order is that, instead of 40% back wages, the concerned workman will be entitled to Rs.30,000/- in all, towards back wages for the intervening period.

In view of the aforesaid, Special Civil Applicaiton No.2761 of 1998 is accordingly partly allowed to the said extent, by modifying the order of the Industrial Court passed in Appeal (IC) No.42 of 1996. Rule is accordingly made absolute to the aforesaid extent. No costs.

So far as Special Civil Application No.3875 of 1998 is concerned, the same is rejected. Rule is discharged. No costs.

21st November, 2003 (P.B. Majmudar, J.)

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(apj)